

REMARKS

In an Official Action dated October 17, 2005, the Examiner rejected the pending claims under obviousness-type double patenting, and as anticipated by U.S. 5,788,677 and U.S. 6569115. Applicants request that the Examiner reconsider the rejection in light of the following discussion.

Priority

The Examiner's position appears to be that Applicants' priority claim to the '905 application is not valid because the '905 application does not support the present claims. Applicants' request that the Examiner reconsider the Examiner's finding regarding the priority claim in light of the following.

The '905 application is a continuation-in-part application of Application 08/699,998, which issued as U.S. 5,788,677. The Examiner has rejected the present claims over US 5,788,677. Therefore, obviously the Examiner believes that the subject matter of the present claims was sufficiently disclosed and described in the parent application of the present application.

The Examiners concern appears to be that the description and the drawings in the '905 application are different from the description and the drawings in the '998 application. Even if that is true, it does not matter. The '998 application was incorporated by reference into the '905 application. Therefore, the '905

application is deemed to include all of the description and drawing explicitly set forth in the '905 application and all of the description and drawings in the '998 application.

The Examiner has not pointed to any deficiency in the manner in which the '998 application was incorporated by reference into the '905 application, and there was none.

Specifically, as set forth in MPEP §608.01(p) it is perfectly valid for an application to incorporate by reference material that is necessary to comply with the written description and best mode requirements of §112. The only requirement under 37 CFR 1.57 is that the application contain an express intent to incorporate the matter by reference and the patent, application or publication must be clearly identified.

In the present instance, the '905 application was filed with a statement that the '998 was incorporated by reference into the '905 application. In fact, the reference is on the U.S. 6,123,688 which issued from the '905 application. Accordingly, since the '998 patent was incorporated into the '905 patent, the disclosure of the '998 patent is deemed to be in the '905 patent.

Since the disclosure of the '998 application is deemed to be in the '905 application, the present claims are supported by the '905 application. Therefore, the priority claim is proper, and Applicants request that the Examiner the refusal to grant

the earlier priority claim.

§102 Rejections

Since the priority claim in the present application is proper, the present application has priority back to U.S. Application No. 08/699,998 filed 8/20/1996, which issued as U.S. 5,788,677. Therefore, U.S. 5,788,677 is not prior art under §102 against the present claims. Similarly U.S. 6,569,115 is not §102 prior art against the pending claims because the pending claims have an earlier effective filing date.

Double Patenting

Although Applicants do not accept the Examiner's position regarding the double-patent rejection, in order to move this application forward, Applicants will file a terminal disclaimer relative to U.S. 5,788,677.

In light of the foregoing, Applicant believes that this application is in form for allowance. The Examiner is encouraged to contact Applicant's undersigned attorney if the Examiner believes that issues remain regarding the allowability of this application.